

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JAMES M. PLASSE

Plaintiff,

v.

**TYCO ELECTRONICS
CORPORATION**

Defendant.

Civil Action No. 04-CV-30056-MAP

AFFIDAVIT OF JEFFREY D. CLEMENTS

I, Jeffrey D. Clements, depose and state as follows:

1. I am counsel for Defendant Tyco Electronics Corporation ("TEC") in the above-captioned litigation. This Affidavit is offered in support of TEC's Application for Attorneys Fees and Costs made in connection with the Court's September 7, 2006 Memorandum and Order allowing TEC's Motion to Dismiss and For Sanctions. As summarized in the spreadsheet attached to this affidavit as Exhibit 1, TEC incurred fees and expenses to Clements & Clements, LLP in connection with the proceedings related to the Plaintiff's fraud on the court in the amount of at least \$36,101.28.

2. I am admitted to practice law in Massachusetts, the United States District Court for the District of Massachusetts, the United States Court of Appeals for the First Circuit, the United States Supreme Court, and the federal and state courts of Maine. I have practiced law since 1988, when I began practicing in the State of Maine. In 1996 I joined the Massachusetts Attorney General's Office, and was admitted to practice in the Commonwealth of Massachusetts. In 2000, I joined the Boston law firm of Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.

(“Mintz Levin”) where I was elected to the membership (the equivalent of partner) in 2002. In July 2003, I formed Clements & Clements, LLP, a Boston litigation firm, with Ben T. Clements.

3. My practice has focused on litigation since 1988. I have significant experience in representing clients in state and federal courts in complex litigation matters involving such areas as fraud, employment, defamation, contract and business transactions, trade secrets, insurance, civil rights, government investigations and prosecutions, among others.

4. I have represented TEC in this action from its initiation by the Plaintiff. Ingrid S. Martin, an associate with Clements & Clements, LLP, also represented TEC in this action.

5. At the outset, we billed TEC at a partner hourly rate of \$295 and an associate hourly rate of \$225. Under an alternative fee arrangement with TEC, we agreed that TEC would retain 20% of the amount due to Clements & Clements, LLP based on hourly charges each month until the conclusion of the matter. At the conclusion of the matter, TEC and Clements & Clements, LLP will agree upon payment of 0% to 200% of the “hold-back” amount, with the final amount determined based on factors such as client satisfaction and results. TEC has confirmed that based on client satisfaction and results it will pay at least 100% of the hold-back amount. Thus, for purposes of this fee application, the appropriate rate is a partner hourly rate of \$295 and an associate hourly rate of \$225 throughout.

6. Beginning with our January 6, 2005 invoice, Clements & Clements, LLP began submitting invoices in this matter to the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (“Ogletree Deakins”). Effective January 2005, Ogletree Deakins became national labor and employment counsel for Tyco International (“Tyco”), including TEC. Thus, beginning in or about January 2005, Ogletree Deakins commenced its representation of TEC in this matter, but

retained Clements & Clements, LLP as its local counsel. All fees charged by Clements & Clements in this matter after January 2005 have been paid by Ogletree Deakins.

7. Current rates at Clements & Clements, LLP for new matters are \$400 (partner) and \$275 (associate).

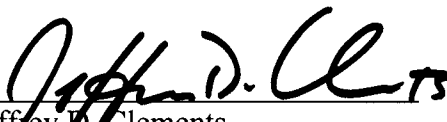
8. When I was a partner at Mintz Levin my hourly rate in 2002 and 2003 was at least \$400. In my experience and knowledge of the marketplace for attorneys representing companies in employment matters such as this one, particularly involving allegations of financial accounting issues, I believe that the hourly rates charged by Clements & Clements, LLP, in this matter were reasonable and at or below market rates.

9. Attached hereto as Exhibit 1 is a summary of all activities that Ms. Martin and I have performed in this matter pertaining to the investigation of and litigation concerning Mr. Plasse's acts of evidence concealment and destruction. I prepared the attached summary by duplicating our actual invoices, deleting entries that did not pertain to Mr. Plasse's misconduct, and then reorganizing the remaining entries into the following six categories: (1) Original Sanctions Motion To Dismiss; (2) Computer-Related Discovery Prior to Motion To Compel Discovery; (3) Motion to Compel Computer-Related Discovery; (4) Ink Dating Analysis; (5) Computer-Related Discovery After Motion to Compel Discovery; and (6) Renewed Sanctions Motion to Dismiss.

10. Specifically excluded from the attached time summary are litigation activities that were not related to Plasse's misconduct. Thus, excluded from the time summary are activities such as: investigating of the allegations in the Complaint; removal of the action to the District Court; preparation of TEC's Answer; preparation of TEC's Initial Disclosures; preparation of TEC's Request for Production; responding to Plasse's Request for Production; preparing for and

taking Plasse's two-day deposition; preparing four TEC witnesses for deposition and defending those depositions; numerous strategy conferences with co-counsel and the client regarding the litigation; and preparing TEC's Motion for Summary Judgment (which TEC was not ultimately required to file).

Signed under the pains and penalties of perjury.



Jeffrey D. Clements

Dated: September 28, 2006

EXHIBIT A

Clements and Clements, LLP

1. Original Sanctions Motion To Dismiss

Date	Atty	Activity	Time	Hourly Rate	Fee
12/6/2004	JDC	Review memo from CCC and complete review of Plasse deposition re: fraud on court and sanctions.	1.70	295.00	\$501.50
12/7/2004	JDC	Draft correspondence to Attorney Cahillane re: expedited discovery motions, fraud on court, and motion to amend.	1.30	295.00	\$383.50
12/10/2004	JDC	Telephone conference with Arthur Hui, e-mails with Charlie Post re: Plasse sanctions letter and revisions to correspondence.	0.70	295.00	\$206.50
12/13/2004	JDC	Correspondence to Attorney Cahillane re: Plasse deposition.	0.70	295.00	\$206.50
1/18/2005	JDC	Draft motion to compel and motion for sanctions. Draft memo re: key points of volume II of deposition to incorporate into memos in support of motions.	5.80	295.00	\$1,711.00
1/19/2005	JDC	Continued research and drafting of motions, memoranda in support re: sanctions and related issues.	3.80	295.00	\$1,121.00
1/20/2005	JDC	Telephone conference with MaryAnn Ayala re: personnel file and other documents. Draft affidavit and correspondence re: same. Completion of draft Motion and memorandum in support of Motion to Dismiss as sanction/fraud on court. Correspondence to Arthur Hui and Charlie Post re: same.	5.50	295.00	\$1,622.50
2/22/2005	ISM	Reviewed Plaintiff's Opposition to Mot to Dismiss and attached exhibits, and began drafting a Reply.	1.30	225.00	\$292.50
2/23/2005	ISM	Drafted reply brief to Plasse's Opposition to Motion to Dismiss; reviewed various copies of Plasse's personnel file.	2.70	225.00	\$607.50
2/25/2005	ISM	Completed first draft of reply brief re Tyco Electronics' motion to dismiss.	3.00	225.00	\$675.00
2/28/2005	ISM	Met with JDC re Reply Brief and also discussed issues raised by Ayala Affidavit. Telephone call with Ayala. Revised brief per discussion with JDC. Drafted second Ayala Affidavit.	5.00	225.00	\$1,125.00
2/28/2005	JDC	Work on reply memo. Conference with ISM re: strategy, Ayala affidavit. Correspondence re: personnel file and affidavit.	2.30	295.00	\$678.50
3/1/2005	ISM	Revised reply brief and Ayala's second affidavit per JDC's comments; reviewed documents provided by Ayala; drafted ISM's affidavit; discussed second affidavit with Ayala per telephone.	2.80	225.00	\$630.00
SUBTOTAL			36.60		\$9,761.00

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1. Original Sanctions Motion To Dismiss *(continued from page 1)*

Date	Atty	Activity	Time	Hourly Rate	Fee
3/1/2005	JDC	Review and revise Reply Memo. Review and revise Ayala affidavit. Conference with ISM re: same. Correspondence to Mark Diana, Charles Post, Arthur Hui re: same.	2.00	295.00	\$590.00
3/3/2005	ISM	Finalized Reply, ISM Affidavit, Second Ayala Affidavit, and Motion for Leave to File; Spoke to Ayala on telephone re her affidavit and re human resources practices.	0.60	225.00	\$135.00
3/3/2005	JDC	Telephone call with Attorney Cahillane re: reply memo motion.	0.30	295.00	\$88.50
3/4/2005	ISM	Reviewed scanned copy of Ayala Affidavit and finalized Reply papers for electronic filing with court.	0.50	225.00	\$112.50
3/18/2005	JDC	Telephone call with Mark Diana and Lynelle Slivinski re discovery.	0.50	295.00	\$147.50
4/11/2005	JDC	Telephone call with court clerk and e-mail re: hearing.	0.30	295.00	\$88.50
4/13/2005	ISM	Meet with JDC to discuss strategy re upcoming motion to dismiss.	0.50	225.00	\$112.50
4/13/2005	JDC	Telephone conference with Mark Diana, Charlie Post.	0.50	295.00	\$147.50
4/27/2005	JDC	Preparation for hearing.	1.00	295.00	\$295.00
4/28/2005	JDC	Preparation for and argument at hearing on motion to dismiss. Conference with Mark Diana re: strategy.	5.40	295.00	\$1,593.00
SUBTOTAL (from page 1)			36.60		\$9,761.00
TOTAL			48.20		\$13,071.00

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2. Computer-Related Discovery Prior to Motion To Compel Discovery

Date	Atty	Activity	Time	Hourly Rate	Fee
4/4/2005	JDC	Draft correspondence to Maurice Cahillane re: computer production, depositions.	0.50	295.00	\$147.50
4/14/2005	ISM	Research Massachusetts case law re computer discovery and appointment of computer forensic expert; draft memorandum re computer forensics and relevant case law to JDC; telephone conference with EvidentData (computer forensics company).	2.80	225.00	\$630.00
4/29/2005	ISM	Outline strategy for computer forensics; discuss case status with JDC.	0.70	225.00	\$157.50
5/2/2005	ISM	Review and revise M. Diana's proposed letter to Cahillane re expert examinations; telephone call to EvidentData; discuss letter with Diana via telephone.	1.00	225.00	\$225.00
5/3/2005	ISM	Review of computer protocol draft by Diana; telephone discussions with potential experts at EvidentData; email correspondence to set up conference call with EvidentData.	0.60	225.00	\$135.00
5/5/2005	JDC	Telephone conference with Arthur Hui and e-mail re: computer expert.	0.60	295.00	\$177.00
5/6/2005	JDC	Correspondence re: computer inspection and related follow-up.	0.20	295.00	\$59.00
5/6/2005	ISM	Participate in telephone conference with EvidentData re proposed computer examination protocol; revise and finalize letter to Cahillane re computer and ink expert examinations.	0.80	225.00	\$180.00
5/13/2005	JDC	Review and revise correspondence re computer/discovery issues.	0.40	295.00	\$118.00
5/13/2005	ISM	Review and revise letter to Cahillane re computer and ink experts; call Ponsor court reporter re hearing transcript.	1.20	225.00	\$270.00
TOTAL			8.80		\$2,099.00

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3. Motion to Compel Computer-Related Discovery

Date	Atty	Activity	Time	Hourly Rate	Fee
5/16/2005	ISM	Email correspondence with M. Diana re drafting of motion to compel; call to Magistrate Neiman's clerk.	0.30	225.00	\$67.50
5/18/2006	ISM	Correspondence via email with M. Diana re motion to compel computer discovery.	0.20	225.00	\$45.00
5/20/2005	ISM	Telephone call with EvidentData to discuss drafting of affidavit.	0.20	225.00	\$45.00
5/23/2005	JDC	Telephone calls with Mark Diana, Maurice Cahillane, clerk re: status conference. E-mail correspondence re: same. Conference with ISM re: expert affidavit.	0.70	295.00	\$206.50
5/25/2005	ISM	Correspond with EvidentData re retainer letter and expert affidavit.	0.20	225.00	\$45.00
5/27/2006	ISM	Telephone call with computer expert re revision of expert declaration for motion to compel; draft follow-up email to expert; correspondence with M. Diana re expert declaration and engagement letter.	1.10	225.00	\$247.50
6/2/2005	JDC	Preparation for hearing. Telephone call with Mark Diana. Conference with ISM re: computer inspection. Review Cahillane letter. Review of agenda for hearing.	0.70	295.00	\$206.50
6/3/2005	ISM	Telephone conference call with Garza and Spencer from EvidentData re expert declaration; discussion with BTC re court hearing and finalizing motion to compel.	0.50	225.00	\$112.50
6/3/2005	JDC	Review and revise motion to compel computer inspection. Court hearing in Springfield, conference with Mark Diana re: scheduling and strategy issues.	5.00	295.00	\$1,475.00
6/6/2005	ISM	Correspondence with M. Spencer at Evident Data re declaration; correspondence with Lynelle re filing of motion to compel.	0.50	225.00	\$112.50
6/8/2005	ISM	Telephone calls with EvidentData re finalizing expert declaration; draft email to Mark and Lynelle re same.	0.40	225.00	\$90.00
6/10/2005	JDC	Review and revise motion to compel.	0.70	295.00	\$206.50
6/13/2005	ISM	Finalize motion to compel, memorandum in support, and affiliated documents for filing with court.	2.20	225.00	\$495.00
6/16/2005	ALF	Preparation of exhibits for motion to compel; Filing and service of motion.	2.00	110.00	\$220.00
6/22/2005	ISM	Review of Plasse's response to motion to compel; email correspondence with Mark Diana re same.	0.30	225.00	\$67.50
SUBTOTAL			15.00		\$3,642.00

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3. Motion to Compel Computer-Related Discovery *(continued from page 4)*

Date	Atty	Activity	Time	Hourly Rate	Fee
6/13/2005		FedEx to Maurice M. Cahillane at Egan, Flanagan & Cohen.			\$20.39
6/13/2005		FedEx to U.S. District Court.			\$20.39
7/6/2005	JDC	Review order granting motion to compel. Conferences with ISM, Mark Diana re: deposition, computer inspection, summary judgment motion.	0.80	295.00	\$236.00
SUBTOTAL <i>(from page 4)</i>			15.00		\$3,642.00
TOTAL			15.80		\$3,918.78

4. Ink Dating Analysis

None

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5. Computer-Related Discovery After Motion to Compel Discovery

Date	Atty	Activity	Time	Hourly Rate	Fee
7/20/2005	ISM	Correspond with EvidentData (computer expert) re Plasse deposition this Friday.	0.10	225.00	\$22.50
7/21/2005	ISM	Strategy discussion re Plasse deposition with Mark Diana; review and revision of deposition outline; final preparation of exhibits to be used during depo.	1.00	225.00	\$225.00
7/22/2005	ISM	Conduct deposition of Plasse re computers and affiliated storage media; meet with opposing counsel to arrange for computer examination; discuss logistics and strategy for computer examination with Mark Spencer (EvidentData); discuss strategy with Mark Diana; draft letter to Cahillane confirming agreements reached.	2.90	225.00	\$652.50
7/26/2005	ISM	Telephone calls re issues which arose while EvidentData was copying Plasse's computer and media; call with EvidentData re preliminary findings.	0.80	225.00	\$180.00
7/27/2005	JDC	Telephone conference with Evident Data, Mark Diana re: on-going computer inspection.	1.50	295.00	\$442.50
7/27/2005	ISM	Conference call with Mark Spencer and JDC re preliminary computer search findings and discussion re additional searches; conference call with Mark Diana and JDC re computer search findings and strategy going forward.	1.50	225.00	\$337.50
7/28/2005	ISM	Telephone conference call with EvidentData re findings from computer analysis; discussion with JDC and Lynelle S. re strategy going forward; review of documents sent by EvidentData.	2.50	225.00	\$562.50
8/3/2005	JDC	Conference at Evident Data to review findings. Conference with ISM re: report.	3.40	295.00	\$1,003.00
8/4/2005	ISM	Telephone call with Mark Spencer re final examination tasks and proposed report outline; draft email to M. Diana re same.	0.80	225.00	\$180.00
8/5/2005	ISM	Telephone call with Mark Diana re status of computer expert report; telephone calls with Mark Spencer re status of computer expert report.	0.80	225.00	\$180.00
8/9/2005	ISM	Telephone call with EvidentData re discovery of time and date manipulation on Plasse's laptop; draft email to JDC and Mark Diana re same.	0.60	225.00	\$135.00
8/12/2005	ISM	Telephone call with EvidentData re finalizing expert report.	0.30	225.00	\$67.50
TOTAL			16.20		\$3,988.00

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6. Renewed Sanctions Motion to Dismiss

Date	Atty	Activity	Time	Hourly Rate	Fee
8/2/2005	ISM	Discuss renewed motion to dismiss strategy with Jeff; telephone call with computer expert to discuss new findings and set up meeting.	0.20	225.00	\$45.00
8/17/2005	JDC	Review of expert report; revisions to key points summary; telephone conference with Mark Diana.	2.00	295.00	\$590.00
8/17/2005	ISM	Review of draft renewed motion to dismiss outline; telephone conference call with JDC, Mark Diana, and Lynelle S re outline and strategy for renewed motion to dismiss; telephone conference call with Mark Diana and Mark Spencer re final revisions to expert report.	3.90	225.00	\$877.50
8/18/2005	ISM	Draft email to M. Diana and Mark Spencer re MA law regarding experts; review Mark Spencer's CV.	0.50	225.00	\$112.50
8/22/2005	JDC	Review and revise brief in support of renewed motion to dismiss. E-mail correspondence with Mark Diana re: same. Draft correspondence to Attorney Cahillane re: expert report, motion to dismiss and Local Rule 7.1. Conference with ISM re: filing logistics, exhibits.	2.60	295.00	\$767.00
8/23/2005	JDC	Conference with ISM re: brief. Review correspondence from Attorney Cahillane re: expert report and telephone conference with Mark Diana re: same.	0.80	295.00	\$236.00
8/23/2005	ISM	Identify documents to be used as exhibits to motion to dismiss; review draft motion for consistency with expert's findings.	1.20	225.00	\$270.00
8/26/2005	JDC	Review and revise memo in preparation for filing. Telephone conferenes with Attorney Cahillane, Mark Diana, Charlie Post re: Plasse proposal to dismiss claim, sanctions motion.	2.30	295.00	\$678.50
8/29/2005	ISM	Revise memorandum in support of renewed motion to dismiss.	0.80	225.00	\$180.00
8/29/2005	JDC	Telephone conferene with Attorney Cahillane, Mark Diana. Draft revisions to memorandum in support of sanctions motion.	1.20	295.00	\$354.00
8/30/2005	ISM	Draft renewed motion to dismiss; review and revise memorandum in support; contact EvidentData with question re expert report.	2.50	225.00	\$562.50
SUBTOTAL			18.00		\$4,673.00

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6. Renewed Sanctions Motion to Dismiss *(continued from page 7)*

Date	Atty	Activity	Time	Hourly Rate	Fee
8/30/2005	JDC	Continued negotiations with Plasse counsel, telephone conferences with Mark Diana, Charlie Post, and revisions to motion to dismiss.	1.80	295.00	\$531.00
9/2/2005	JDC	Telephone conference with Attorney Cahillane. Telephone conference with Mark Diana, Charlie Post re: dismissal and motion to dismiss, sanctions.	1.00	295.00	\$295.00
9/2/2005	ISM	Preparation and assembly of renewed motion to dismiss.	0.20	225.00	\$45.00
9/6/2005	ISM	Final preparation of motion, memorandum, and exhibits for electronic filing with court; draft cover letter to clerk.	2.60	225.00	\$585.00
9/6/2005	JDC	Final review and revisions of motion, memorandum, exhibits in preparation for filing. Draft local rule 7.1 certification. Correspondence to Charlie Post and Mark Diana re: same.	1.60	295.00	\$472.00
9/16/2005	ISM	Telephone call with Cahillane's office re five day extension to file Plasse's opposition to motion to dismiss.	0.10	225.00	\$22.50
9/27/2005	ISM	Review Plasse's opposition to motion to dismiss; review documents to verify Plasse's arguments/claims.	0.80	225.00	\$180.00
9/27/2005	JDC	Review and analysis of opposition memorandum, affidavits, exhibits. Conference with ISM re: resume issue. Telephone conference and e-mail with Mark Diana re: Reply Memo and strategy.	2.20	295.00	\$649.00
9/30/2005	ISM	Review draft of TEC Reply Brief re TEC's renewed motion to dismiss.	0.60	225.00	\$135.00
10/3/2005	JDC	Draft revised reply brief and table of misconduct.	4.30	295.00	\$1,268.50
10/7/2005	JDC	Review final draft of brief. Telephone call and e-mail correspondence with plaintiff's counsel. Filing of motion and brief.	0.80	295.00	\$236.00
10/7/2005	ISM	Finalize Reply Brief, Motion for leave to file reply and extend SJ motion deadline, and Reply Brief exhibit; oversee electronic filing of pleadings.	0.80	225.00	\$180.00
11/15/2005	JDC	Preparation for motion to dismiss hearing, including drafting of chronology, summary of evidence. Review and update fraud on the court case law. Review key evidence.	4.30	295.00	\$1,268.50
11/16/2005	JDC	Preparation for hearing on motion to dismiss. Review and revise exhibits, argument. Oral argument, conferences of counsel in federal court.	6.00	295.00	\$1,770.00
SUBTOTAL			27.10		\$7,637.50

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6. Renewed Sanctions Motion to Dismiss (continued from page 7 and 8)

Date	Atty	Activity	Time	Hourly Rate	Fee
11/30/2005	ISM	Review and edit supplemental memorandum in support of renewed motion to dismiss.	1.10	225.00	\$247.50
6/13/2006	JDC	Review recent spoliation case relevant to motion to dismiss. Correspondence to Mark Diana and Charlie Post re: same.	0.60	295.00	\$177.00
6/13/2006	ISM	Review recent MA state court re: evidence destruction; discuss with JDC.	0.50	225.00	\$112.50
6/16/2006	JDC	Draft and file correspondence to Judge Ponsor re: recent fraud on the court decision. Correspondence to counsel re: same.	0.40	295.00	\$118.00
6/29/2006	JDC	Review correspondence to court from Plasse counsel.	0.20	295.00	\$59.00
SUBTOTAL (from page 7)			18.00		\$4,673.00
SUBTOTAL (from page 8)			27.10		\$7,637.50
TOTAL			47.90		\$13,024.50

SUMMARY

Section	Time	Fee
1. Original Sanctions Motion To Dismiss	48.20	\$13,071.00
2. Computer-Related Discovery Prior to Motion To Compel Discovery	8.80	\$2,099.00
3. Motion to Compel Computer-Related Discovery	15.80	\$3,918.78
4. Ink Dating Analysis	0.00	\$0.00
5. Computer-Related Discovery After Motion to Compel Discovery	16.20	\$3,988.00
6. Renewed Sanctions Motion to Dismiss	47.90	\$13,024.50
TOTAL	136.90	\$36,101.28
10% DISCOUNT		-\$3,610.13
ENDING TOTAL BALANCE		\$32,491.15